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International Convention on the Elimination of all Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Forty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Eleventh periodic reports of States parties due in 1993

Addendum

ZAMBIA*

[22 February 1993]

Introduction

1. Zambia signed the International Convention on the Elimination of All Forms of Racial Discrimination** on 11 October 1968 and acceded to the Convention on 4 February 1972. Since accession, Zambia has taken legislative measures to comply with the provisions of the Convention.

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* The present document contains the seventh, eighth, ninth, tenth and eleventh periodic reports which were due on 5 March 1985, 1987, 1989, 1991 and 1993 respectively. For the fifth and sixth periodic reports submitted by Zambia and the summary records of meetings of the Committee at which those reports were considered, see the following documents:

Fifth periodic report - CERD/C/106/Add.1 (CERD/C/SR.634-635);

Sixth periodic report - CERD/C/106/Add.1 and Add.7 (CERD/C/SR.634-635).

** The information submitted by Zambia in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.22).

GE.93-16489 (E)

2. In keeping with the spirit of the Convention, the Constitution of Zambia, which is the supreme law of the land, makes provision for the elimination of all forms of discrimination including racial discrimination.

3. Apart from the constitutional provisions Zambia has taken other legislative measures and has also taken administrative measures for the upholding of the provisions of the Convention and has taken positive steps to abide by its articles.

I. ADMINISTRATIVE OR OTHER COMPETENT AUTHORITIES WITH JURISDICTION AFFECTING HUMAN RIGHTS

4. Apart from the judiciary there are other competent authorities with jurisdiction affecting matters relating to human rights in Zambia. Some of the bodies are:

A. The Commission for Investigations (Ombudsman)

5. The Commission for Investigations is established under chapter 183 of the Laws of Zambia. The Commission is headed by the Investigator-General who is the Chairman of the Commission and has similar qualifications to those of a judge of the High Court. Currently, the Commission for Investigations is headed by a Judge of the Supreme Court. An individual has the right to lodge a complaint with the Ombudsman in matters relating to discrimination, including racial discrimination.

6. For the purpose of exercising its functions the Commission is vested with wide investigatory powers and its investigations are always in camera. Upon completion of the investigations the Ombudsman submits a report together with its recommendations to the President for decision.

B. The Industrial Relations Court

7. In the employment sector Zambia has also taken positive measures to eliminate all forms of racial discrimination. Section 129 (1) of the Industrial Relations Act (No. 36 of 1990) provides that "No employer shall terminate the services of an employee on grounds of race, colour, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status of the employee". If any employee is discriminated against on the ground of his or her race, the Industrial Relations Court set up under the provisions of this Act can grant remedy by way of awarding damages or compensation for loss of employment and can order reinstatement.

II. LEGISLATIVE MEASURES TAKEN

8. Zambia has enacted an Act of Parliament to establish a code of criminal law. By virtue of section 70 (1) of the Penal Code, Zambian law makes it a punitive offence to discriminate on grounds of race. Section 70 (1) provides that: "Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding two years".

9. As stated above, the Industrial Relations Act which establishes the Industrial Relations Court also provides legislation for the implementation of the provisions of the Convention in relation to the employment sector in Zambia.

10. What must, however, be noted is that the civil remedy contained in article 23 of the Constitution is only available to an individual if the person who discriminates against him or her is acting by virtue of any written law or in the performance of the functions of any public office or any public authority, whereas the penal remedy contained in section 70 (1) is applicable to every person in the Republic and it is immaterial whether the perpetrator occupies a public office or not.

III. IMPLEMENTATION OF HUMAN RIGHTS INSTRUMENTS

11. Zambia has no separate Bill of Rights for the protection of human rights. An individual's fundamental freedoms and human rights are instead embodied in the Republican Constitution and are contained in part III thereof.

12. In Zambia accession to an international convention does not confer on an individual locus standi to seek for remedy before the courts as the Convention or its provisions have to be translated into municipal or domestic legislation. It follows from the above that where domestic laws do not provide protection, no remedy is available to an individual from the established mechanism. However, the courts in Zambia have in certain cases given a remedy where an international convention to which Zambia has acceded (but not yet translated into domestic legislation) has been violated, as is evidenced by the cases copies of which are herewith attached.*

13. In Zambia there are several non-governmental organizations involved in the implementation and protection of human rights. These include the following:

(a) Amnesty International;

(b) The Law Association of Zambia;

(c) The Citizens Advice Bureau.

IV. INFORMATION AND PUBLICITY

14. Since independence in 1964 Zambia has had very few problems relating to racial discrimination as all races have integrated well to form a multi-racial community. With the coming into power of the new Government in 1991 this racial integration has been cemented further as is evidenced in both the political and economic sectors which has leaders from all races.

15. The Government of the Republic of Zambia abhors racial discrimination in all its forms and it is contrary to Zambian law and policy. For example, recently a cabinet minister lost his appointment for allegedly making

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* Available for consultation in the files of the secretariat.

discriminatory remarks to subordinates in his ministry. The legislature, the cabinet and the judiciary consist of persons of different racial origins.

16. In 1991 Zambia expelled nationals of certain countries from its territory for having entered Zambia illegally. This culminated in a complaint from the Government of Senegal for alleged discrimination on the grounds of origin against its nationals. Although Zambia did deport people from several foreign countries who had entered the country illegally, this did not affect nationals of Senegal alone but also nationals from other countries as evidenced by the attached fact sheet.* Certain nationals of Senegal who entered Zambia legally were not deported and are still in Zambia. Further, the deportations referred to above were conducted in accordance with the immigration and deportation laws and procedures existing in Zambia.

17. The International Convention for the Elimination of All Forms of Racial Discrimination has not been translated into any local language. This is due to the economic hardships Zambia has been going through. The Ministry of Legal Affairs and the Ministry of Foreign Affairs are charged with the preparation of the human rights reports. Information for the preparation of human rights reports is obtained from within Zambia and the contents are not subject to public debate.

18. With regard to article 5 of the Convention, every person is equal before the law under the Zambian legal system. This guarantee is found in part III of the Zambian Constitution. Further, an individual who suffers any harm through a government agency has redress in the courts of law.

V. POLITICAL RIGHTS

19. In Zambia the civil and political rights of an individual are guaranteed in part III of the Constitution, as stated earlier. The right to vote and the right to take part in the affairs of one's Government are guaranteed by the Constitution (art. 75 (1)). All Zambians have a right to form their own political parties or to be members of a political party of their own choice and this is not dependent upon their colour, origin or race. Although non-Zambians do enjoy certain civil rights there are some rights that non-Zambians do not enjoy such as the right to vote and stand for elections.

VI. SOCIAL AND CULTURAL RIGHTS

20. In Zambia any person can live in the area of his or her own choice without restrictions. The rights to nationality, marriage and choice of spouse and the right to inherit are not based on race. Access to public places such as hotels and restaurants is not based on race; neither is the right to health and housing. However, due to economic and financial constraints, the majority of Zambian people have been unable to enjoy fully the social rights. Zambia is one of the poorest countries of the world. Poverty-related diseases are among the largest causes of deaths in the country, i.e. preventable diseases such as malnutrition, cholera, dysentery and malaria are the main causes of deaths among children and adults.

VII. EDUCATION

21. The English language is the official mode of instruction in Zambia's schools, colleges and universities. Apart from the English language there are four major local languages, namely, Nyanja, Tonga, Lozi and Bemba, that are taught in schools. The Zambian Government has in the past provided free education to all Zambians regardless of their race, colour or origin. Further, section 24 of the Education Act, chapter 234 of the Laws of Zambia, provides that "No pupil shall be refused admission to any school or school hostel on the grounds of his race or origin".

VIII. CULTURE

22. Zambia is a multicultural country and people are free to perform activities in accordance with their culture whenever or wherever they so wish. They are also allowed to perform their cultural activities on television and radio. All the cultural activities so performed or observed must not be contrary to any written law. Further, Zambia has entered into several cultural agreements with a lot of countries to promote cultural understanding, tolerance and friendship. Non-governmental organizations also organize seminars/workshops on human rights. In the event that any group is prohibited from performing their cultural activities in accordance with their customary law the Subordinate Court and the High Court have jurisdiction to enforce their customary law so long as that customary law is not contrary to any written law or repugnant to the principles of natural justice. Zambians are also free to prepare programmes on human rights to be broadcast on national television and radio for public information. In Zambia there is a Ministry of Social and Community Development which is mandated, inter alia, with the duty of overseeing the production of cultural programmes and activities intended to assist the integration of different racial groups so as to create a conducive intercultural understanding and tolerance in the country.

23. In relation to article 6 of the Convention we refer to the comments made concerning Zambia's 1983 report, in particular paragraph 33 where the Committee requested Zambia to include in the next report information about the elimination of inequalities between Asians and Africans and between the various African ethnic groups and about the situation of the many refugees and asylum seekers from southern Africa. We wish to state that the Asian and African ethnic groups have no inequalities among them. In fact, economically the Asians are better placed as they are involved in trade to a larger extent than Africans. Politically, Asians have participated fully in the political administration of the country at a high level just like their African counterparts.

24. There are also no inequalities between the various African ethnic groups as Zambians have integrated fully at all levels. Zambia has in the past and will continue to grant asylum to asylum seekers such as the former President of Uganda. Zambia has continued to be home to refugees fleeing political and economic chaos in their countries. Although the repatriation of refugees from Namibia and South Africa has reduced the influx of refugees into Zambia, other refugees have continued to arrive in Zambia en masse from Mozambique, Angola, Malawi and Zaire. Some of the refugees have been integrated in the society and others are working in Zambia.

25. There is no racial discrimination in relation to adoption of children in Zambia. The few restrictions that exist in relation to adoption are non-racial.

26. In relation to article 4 of the Convention the Penal Code, chapter 146 of the Laws of Zambia, in terms of section 70 (1), encompasses all persons in Zambia. With regard to the specific question asked in relation to the implementation of article 4 of the Convention and the remedy available to a Zambian victim of racial discrimination in terms of section 34 (3) of the Penal Code, a non-Zambian victim has recourse to sections 70 (1) and 71 of the Penal Code, chapter 146 of the Laws of Zambia. Further, article 4 (c) of the Convention is catered for by the provisions contained in sections 70 (1) and 71 of the Penal Code and article 23 of the Republican Constitution.

27. The Citizenship Act, chapter 121 of the Laws of Zambia, makes provision for persons who are non-Zambians to apply for Zambian citizenship. Zambian law on citizenship does not discriminate on grounds of race in regard to applications for citizenship.